IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL FIRST APPEAL No. 252 of 2003

STATE & ORS
V/S
PARBAT SINGH

Mr. SN TIWARI, DY.G.A., for the appellant.

Mr. NS ACHARYA, for the respondent

Date of Order : 17.12.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The matter comes up for consideration of stay petition, however, at the request of both the learned counsel, the appeal has been heard finally at this stage itself, as the necessary record was made available for perusal of the Court by the learned counsels.

The plaintiff has filed the present suit for compensation, amounting to be Rs.1,25,000/- on 4.1.95, alleging inter alia, that his agricultural land, being Khasra No.1334 measuring 1.95 Hectare, is situated in village Jakhora, whereon he has raised certain constructions for rest, and for storage of house hold articles.

According to the plaintiff, the Jawai Canal passes adjacent to his land, which canal was constructed 40 years ago, but then, on account of want of proper maintenance etc., the canal is substantially damaged with the result, that it results into substantial seepage of water, and adversely effects about 8 bighas of land of the plaintiff. According to the plaintiff, for last four years, he has not been able to cultivate any crop, whether of Rabi, or Kharif. It is then alleged, that despite repeated requests, repair has not been done. Thereupon, he approached the Additional Chief Engineer, who visited the site, and assured for repair, but nothing has been done. Inter alia, with these averments, the plaintiff has claimed damages to the extent of Rs.28,000/- for the year 1990 to 1994 for the Kharif crop, and a sum of Rs.54,000/- for the year 1990 to 1993-94 for the Rabi crop. Then excluding the claim, which became time barred, he has claimed a compensation of Rs.70,000/- to be within limitation. In addition, he has also claimed Rs.55,000/- on account of damage, caused to his construction, which fell down on account of seepage of the water.

The defendants contested the suit, contending inter alia, that the canal is being regularly maintained as and when required. The allegation of seepage of water during whole year was denied, and it was averred that along side of the canal, there is a Kachcha drain, which receives the seepage water, and drains it out, with the result that no

damage is caused to the plaintiff. Rather, the flow of canal raises the water-table of the well of the plaintiff, and thus, is advantageous to the plaintiff. It was also alleged, that in the event of water being collected by seepage, that is beneficial in cultivating commercial crops, thus, the plaintiff did not suffer any loss.

The learned trial Court on these pleadings, framed eight issues. In view of the finding, recorded by the learned trial court, the relevant issues, which survive for consideration, are issues no.3, 4, 5 and 7. Inasmuch as, issue no.2 relates to the construction (part of the storey), while issue no.6 relates to the damages, said to have been suffered by the plaintiff, on account of construction. Since damages to the construction have not been awarded, and no cross-objections are filed by the plaintiff, as such, these two issues need not detain me. Then, coming to issues no.3 and 4, the learned trial Court has found that the plaintiff has clearly deposed, that during the relevant years, the crop sown by him was damaged, and did not yield any return on account of seepage, inasmuch as, during the year 1991 to 1993, the crop of Wheat and Raida was sown, which was totally destroyed on account of non-repair of the canal resulting into seepage of water. It was also noticed, that the Commissioners were appointed from time to time, who inspected the site in presence of the parties. Likewise, the other evidence led by the plaintiff, consisting of P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, etc, was also appreciated, and then in para 17 & 18, the statements of D.W.1, and D.W.2 were recapitulated, and it was found, that even according to D.W.1, it is the responsibility of the defendants to properly maintain the canal, and that the red marked portion in Ex.6 is the portion, where the lining of the canal is damaged. Then the witness had admitted the Commissioner's report, Ex.8 & 9, to have been prepared in accordance with the things prevalent on the site. Thus, the learned trial Court found, on appreciation of evidence, that part of the canal in between RD-36000 and 37000, which passes through, near the land of the plaintiff is damaged, and when the canal flows to its full capacity, it causes seepage of water, and damages the crop standing in the plaintiff's field, and that after 1990, during the relevant period, the canal was not repaired. The learned trial Court also relied upon the Commissioners' report, Ex.8 & 9, and, P.W.2 Civil Engineer's report, Ex.7, so also the plans, Ex.6 & 10. Then, while deciding issue no.5, relating to quantum of damage, the learned trial Court found, that the Commissioner had inspected the site thrice, on which time, the water level of the canal was 3 to 4 feet, and water was not found in the land, but then, it was found that seepage occurs when the canal flows above 5 feet. Then, it was found that the Rabi crop is sown on the land during the period October and is there till March, and during this period, when the canal flows to its full capacity, it does cause seepage, and the land becomes marshy

land, which cannot sustain the crop. It was also found that the canal flows for a period of four months, beginning from the month of Kartik (around October), with the result that the plaintiff cannot be said to have suffered any loss of Kharif crop. Likewise, looking to the geographical condition of the land, it was found that out of the entire land, only 8 to 9 bighas of land is effected by seepage during the Rabi period, and this was found to have been so effected during the periods 1991-92, 1992-93, 1993-94, and for this, three years' average loss of Rs.9000/- per year was assessed, and a decree for Rs.27,000/- has been passed. Then, while deciding issue no.7, it was found, that it is the duty of the Irrigation Department to maintain the canal, and the plaintiff was found entitled to have the injunction.

The suit was decreed for a sum of Rs.27,000/-, and injunction was granted to maintain the canal.

Assailing the impugned decree, it is contended by the learned counsel for the appellant, that the plaintiff himself was a Deputy Collector, and therefore, it cannot be said, that he was not aware about the canal being damaged, and it has to be assumed that the plaintiff was vigilant about maintenance of the canal, and the canal is not said to be in such a condition, as to cause seepage, as alleged by the plaintiff. The next submission made is, that the site was inspected by three Commissioners, and the Commissioners did not find any collection of seepage water, and therefore, it cannot be said that the plaintiff has established, that any such seepage occurs, and results into damage to the crop.

The next submission made is, that the plaintiff has claimed exaggerated amounts of compensation, for which, there is no basis. It was also contended that the defendant has produced material on record to show, that the canal had been repaired, as is clear from Ex.A.1 to A.3, the measurement books, etc. Likewise, it was also contended, that along side the canal, there is a drain, which receives the seepage water, and drains it out, with the result that no seepage water collected in the field, and thus, no damage is caused to the crop, with the result that the plaintiff is not entitled for any compensation.

On the other hand, learned counsel for the respondent supported the judgment, and has contended, that from the statements of the defendant's witnesses, D.W.1 itself, it is clear that the canal was damaged during the relevant period, and when the Commissioner inspected the site, the land was found to be a marshy land, obviously resulting from the seepage of water. Likewise, it is established, even from the plaintiff's evidence, apart from the fact, that even from the defendant's evidence, it is clear, that seepage does occur, when the canal flows above the level of 5 feet, and it is not in dispute that during the Rabi period, starting from October onwards, the canal does flow above 5 feet, and therefore, it does cause seepage, and water

collection in the field destroys the crops. Likewise, from the plaintiff's evidence, it is clear, that during the relevant years, the plaintiff has regularly sown the crop, which was always damaged on account of the seepage of water, as at the relevant place, there is no drain along the side of the canal to receive the water, rather, the drain is at some distance, and even that is not sufficient to take care of the seepage water. Likewise, regarding quantum, it is contended that even the trial Court has not accepted the plaintiff's claim, as deposed in the witness-box, and there is no evidence in rebuttal, so as to require any interference in the assessment of compensation, made by the learned trial Court.

I have considered the submissions, and have perused the record of the case, as the same was made available by both the learned counsel, specially the statements of the witnesses, and the relevant documents.

In my view, from reading of the statements of the witnesses of the plaintiff, so also D.W.1, it cannot be said, that the learned trial Court was in error in finding that at the place in question, the canal was damaged during the relevant time, inasmuch as, from Ex.A.1 to A.3, it is clear that it was repaired subsequent to the filing of the suit. This obviously shows that at the relevant time, it was damaged. Then the Site Inspection Note, Ex.8 & 9, so also the documents, Ex.6, 7 & 10 make it clear that at the time of inspection, substantial part of the land was marshy land. This, if appreciated in conjunction with the defendant's evidence, that when the canal flows above the height of 5 feet, it causes seepage, and when it is not in dispute that the canal flows to its full capacity during the period October onwards for a period of four months, the plaintiff's evidence is required to be believed, wherein it has been deposed that when the canal flows, it causes seepage, and water logging in his field, to the extent of 8 to 9 bighas of land, and he is able to cultivate only 3 bigha portion thereof, which is of a higher geographical level. That being the position, the conclusion arrived at by the learned trial Court on issues no.3 and 4 does not require any interference, even after reappreciation of evidence, and material on record.

Then coming to issue no.5, suffice it to say that there is no evidence in rebuttal, to show that the plaintiff sustained any lesser damage, or that despite damage to the crop, he received any salvage value. In that view of the matter, the assessment of compensation @ Rs.9000/- per year for one crop of Rabi cannot be said to be excessive, looking to the quality of land, and otherwise available irrigation facilities on the land.

The net result is that I do not find any force in the appeal and the same is, therefore, dismissed.

(N P GUPTA),J.

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